

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
SATTAR QURAISH,
Defendant.

Case No. [3:19-cr-00658-JD-1](#)

ORDER RE DISMISSAL

On the eve of a jury trial, the government filed a motion to dismiss without prejudice the indictment and superseding indictment against defendant Quraish charging him with possession with intent to distribute cocaine and heroin within 1000 feet of a school. Dkt. No. 78. In response to the Court's inquiries at a hearing on the motion, the government said that it had been wrong about the quantity of drugs it attributed to Quraish, and that the amount was not enough to sustain a possession for distribution charge. Dkt. No. 81; *see also* Dkt. No. 84-2. The Court directed the parties to file briefs on whether dismissal should be with prejudice *vel non*. *See* Dkt. No. 81.

The Court requested the briefs because a dismissal without prejudice seemed unfair. The charges against Quraish have been pending since early December 2019, and it is troubling that the government did not determine it that it didn't have a case against him until three court days before trial in November 2020. Accusing an individual of a serious federal crime and letting that accusation dangle for almost one year before assessing the sufficiency of the evidence was negligent. Defendant suggests that the prosecutors acted in bad faith or with flagrant misbehavior, which is required for a dismissal with prejudice. *See United States v. Chapman*, 524 F.3d 1073, 1085 (9th Cir. 2008); *United States v. Hayden*, 860 F.2d 1483, 1487 (9th Cir. 1988). Although the Court is not prepared to go that far because the record points to misfeasance more than

malfeasance, many of defendant's observations about the prosecutors' defaults are well taken.

The indictments are dismissed without prejudice. The United States Attorney is directed to promptly advise the Court if defendant is charged again for the conduct that was the basis of the indictments here.

IT IS SO ORDERED.

Dated: November 13, 2020



JAMES DONATO
United States District Judge